

[Cite as *State v. Maddox*, 2015-Ohio-2859.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102133

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

DRESHAWN D. MADDOX

DEFENDANT-APPELLANT

JUDGMENT:
REVERSED AND REMANDED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-14-586601-B

BEFORE: Boyle, J., Keough, P.J., and E.T. Gallagher, J.

RELEASED AND JOURNALIZED: July 16, 2015

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MARY J. BOYLE, J.:

{¶1} Defendant-appellant, Dreshawn Maddox, appeals the sentence imposed after he pled guilty to one count of attempting to receive stolen property. He raises the following single assignment of error:

The trial court erred in imposing a restitution order for damages not related to appellant's conviction, and not supported by substantial or reliable evidence.

{¶2} Finding merit to the appeal, we reverse and remand for the trial court to vacate the order of restitution.

Procedural History and Facts

{¶3} In June 2014, Maddox was indicted on a single count of receiving stolen property in violation of R.C. 2913.51(A), a felony of the fourth degree. The indictment specifically identified a motor vehicle as the stolen property. According to the record, the police apprehended Maddox, along with his co-defendant, Adam White, after they fled from a vehicle that had been reported stolen earlier.

{¶4} Maddox ultimately pleaded guilty to an amended charge of attempted receiving stolen property, a felony of the fifth degree. At the plea hearing, the prosecutor indicated that he had an impact statement from the victim, wherein the victim sought restitution for \$904.83. The trial court indicated that restitution would be determined at the sentencing hearing and ordered a presentence investigation report.

{¶5} In September 2014, the trial court held the sentencing hearing for both Maddox and his codefendant. The trial court indicated that the probation department

had provided the victim's statement to the court, which the court shared with the parties. The prosecutor stated that the victim was unable to be present at sentencing but read the victim's following statement into the record:

I have three kids, and these people stole my only means to take care of them and myself. They stole my livelihood either directly or indirectly with no regard for what I work for very hard every day for what I have. They not only stole my tools — “which he refers to the tools being taken out of the car, which is the documentation that he provides for restitution” — but also my only means of transportation for work. If they weren't directly involved and they know who was, if they don't reveal them, then they're protecting him, supporting him and enabling him to do this to others.

{¶6} The prosecutor further stated that the victim had requested a sentence involving prison time and requested restitution in the amount of \$904.83 — the amount for replacing the tools that had been stolen. According to the record, the victim submitted a printout from Home Depot with a number of significantly priced tools.

{¶7} Defense counsel objected to the requested order of restitution, arguing that the victim's proffer alone and the printout were insufficient to support an award of restitution in this case. Defense counsel further disputed the causal connection between Maddox's offense and the alleged, actual damages sustained by the victim.

{¶8} The trial court sentenced Maddox to three years of community control. The trial court further ordered Maddox to serve 180 days in county jail, with 19 days of jail-time credit and 30 days suspended. Further, over defense counsel's objections, the trial court imposed a restitution order of \$904.83, to be paid jointly and severally between Maddox and the codefendant, White.

{¶9} Maddox now appeals the restitution order.

Restitution

{¶10} In his sole assignment of error, Maddox argues that the trial court erred in ordering him to pay restitution in connection with a crime that he was neither charged with or convicted of. We agree.

{¶11} R.C. 2929.18 governs restitution and provides that financial sanctions may include:

Restitution by the offender to the victim of the offender's crime * * * in an amount based on the victim's economic loss. * * * If the court imposes restitution, at sentencing, the court shall determine the amount of restitution to be made by the offender. If the court imposes restitution, the court may base the amount of restitution it orders on an amount recommended by the victim, the offender, a presentence investigation report, * * * and other information, provided that the amount the court orders as restitution shall not exceed the amount of the economic loss suffered by the victim as a direct and proximate result of the commission of the offense. If the court decides to impose restitution, the court shall hold a hearing on restitution if the offender, victim, or survivor disputes the amount.

Id. at (A)(1).

{¶12} "Economic loss" is defined as "any economic detriment suffered as a direct and proximate result of the commission of the crime." *State v. Plants*, 8th Dist. Cuyahoga No. 101552, 2014-Ohio-5293, citing R.C. 2929.01(L).

{¶13} The standard of review of a trial court's order of restitution is an abuse of discretion. *State v. Milenius*, 8th Dist. Cuyahoga No. 100407, 2014-Ohio-3585, ¶ 10, citing *State v. Marbury*, 104 Ohio App.3d 179, 661 N.E.2d 271 (8th Dist.1995). The

term “abuse of discretion” connotes judgment exercised by a court that does not comport with either reason or the record. *Milenius*.

{¶14} In *State v. Lalain*, 136 Ohio St.3d 248, 2013-Ohio-3093, 994 N.E.2d 423, ¶ 24, the Ohio Supreme Court recently emphasized that restitution ordered cannot be greater than the amount of economic loss suffered as a direct and proximate result of the commission of the offense. Therefore, a trial court abuses its discretion in awarding restitution that is not the direct and proximate result of the defendant’s offense. *Id.* And here, we find such an abuse of discretion exists.

{¶15} Maddox was neither charged nor convicted of any crime related to these tools. The receiving stolen property count alleged in the indictment identified the vehicle as the only property at issue. There was never any allegation of stolen tools in the indictment. And while Maddox acknowledged at the plea hearing that “restitution applies to [him] as determined at sentencing” and the prosecutor also indicated that the victim “listed restitution for some of the stolen items at \$904.83,” the payment of this amount was not part of any plea agreement. Instead, all parties agreed that restitution would be determined at sentencing, which was also reflected in the presentence investigation report.

{¶16} The record reflects that the first mention of the alleged stolen *tools* arose at the time of sentencing. The police report did not contain any mention of stolen tools, let alone that Maddox was involved with the theft of any tools. According to defense counsel, the vehicle was returned to the victim at the time of the arrest; although the

victim did not report any missing tools at that time, “he did chime in that there were things in the car that didn’t belong to him, namely, a gun holster and * * * another object.” The state offered no explanation for either the police report omitting the victim’s claim of stolen tools or the victim’s failure to report the tools stolen. Based on the record in this case, there is insufficient evidence that the victim’s alleged loss of over \$900 in tools is the direct and proximate result of Maddox’s criminal actions.

{¶17} We likewise find that the cases relied on by the state are distinguishable from the instant case. In those cases, restitution was appropriate because the losses were the direct and proximate result of the criminal conduct. For example, in *State v. Jackson*, 8th Dist. Cuyahoga No. 99059, 2013-Ohio-3136, we upheld the trial court’s award of restitution for individual items stolen during a burglary offense because the losses were the direct and proximate result of the criminal conduct at issue in the case. In *Jackson*, the defendant entered the victim’s hospital room and stole the victim’s bag while the victim was sleeping. The victim’s bag contained several of the victim’s personal items, including his wallet, identification cards, credit card, and cell phone. Although Jackson ultimately pleaded guilty to an amended indictment of burglary (and not any separate theft counts), the restitution award properly included the loss of the individual items that Jackson stole in the course of the burglary.

{¶18} Unlike *Jackson*, where the record undisputedly established that Jackson took the items at issue in the course of the burglary and even acknowledged his desire to make restitution on the items at sentencing, there is no evidence establishing that Maddox took

these tools. Aside from never being charged with this offense, the indictment does not even identify stolen tools. This record precludes any finding that the loss of the tools is the direct and proximate cause of Maddox's criminal conduct.

{¶19} Accordingly, we sustain the sole assignment of error.

{¶20} Judgment reversed and case remanded for the trial court to vacate the restitution order.

It is ordered that appellant recover from appellee the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY J. BOYLE, JUDGE

KATHLEEN ANN KEOUGH, P.J., and
EILEEN T. GALLAGHER, J., CONCUR